

Resolution No.: 17-734
Introduced: April 9, 2013
Adopted: April 30, 2013

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: Public Safety Committee

SUBJECT: Memorandum of Agreement with Volunteer Fire and Rescue Association (MCVFRA)

Background

1. County Code Section 21-6 establishes a process for Local Fire and Rescue Departments (LFRD's) to select an authorized representative to represent their interests, and requires the Fire Chief to negotiate in good faith with the authorized representative on certain issues affecting LFRD's and their volunteers.
2. The LFRD's selected the Montgomery County Volunteer Fire and Rescue Association (MCVFRA) to be their authorized representative.
3. On April 4, 2013, the Council received from the County Executive the attached Memorandum of Agreement between Montgomery County Government and Montgomery County Volunteer Fire and Rescue Association for the period from July 1, 2011, until June 30, 2014.
4. Code Section 21-6(p) requires the Executive to submit to the Council any element of an agreement that requires an appropriation of funds, may have a future fiscal impact, is inconsistent with any County law or regulation, or requires the enactment or adoption of any County law or regulation. Section 21-6(q) directs the Council to notify the parties within 60 days if it disapproves an agreement in whole or in part. The Council may by resolution extend the time for action.
5. The Public Safety Committee reviewed the portions of the Memorandum of Agreement requiring an appropriation of funds for FY14 and made recommendations on April 18.

Action

The County Council for Montgomery County, Maryland approves the following resolution:


The County Council intends to disapprove full funding for the following provisions of the Agreement:

1. Article 11 – Uniforms and Equipment (turn-out boots and gear bags) for active volunteers at \$52,170.
2. Article 12 – Option 1 nominal fee of \$240 and an Option 2 nominal fee of \$400 for active volunteers for a total of \$342,000.
3. Article 22 – Training at \$5,000.
4. New Vehicle for Association Business at \$26,000.

The County Council intends to approve funding for these provisions as follows:

1. Article 11 – Uniforms and Equipment for active volunteers at \$0.
2. Article 12 – Nominal Fee at \$213,750.
3. Article 22 – Training at \$16,000.
4. New Vehicle for Association Business - \$0.
5. Side letter/MOU - \$223,250 for MCVFRA operating expenses.

This is a correct copy of Council action.


Linda M. Lauer, Clerk of the Council

**MEMORANDUM OF AGREEMENT
BETWEEN
THE MONTGOMERY COUNTY GOVERNMENT AND THE MONTGOMERY
COUNTY VOLUNTEER FIRE RESCUE ASSOCIATION**

The Montgomery County Government (County) and the Montgomery County Volunteer Fire Rescue Association (MCVFRA) agree that their existing directly negotiated agreement will be amended effective July 1, 2011, through June 30, 2014 with the following agreed upon items.

Please use the key below when reading this document:

<u>Underlining</u>	<i>Added to existing agreement</i>
[Single boldface brackets]	<i>Deleted from existing agreement</i>
* * *	<i>Existing language unchanged by parties</i>

* * *

Article 5 – Organization Security

Section One. The County agrees to provide [1000] 50 copies of the contract in booklet form to be provided to the Association within ninety days of the effective date of this Agreement for each LFRD and the MCVFRA office. An electronic copy shall also be maintained on the MCFRS and OHR websites. The cover page of the Agreement shall be designed by mutual agreement between the parties.

[Section Two. By July 1, 2009 the County will provide the Association with a “FIREHOUSE” data terminal with the necessary software, communications line, monitor and printer to be located at the MCVFRA office. Security access will be limited to the battalion chief level.]

[Section Three. The County will provide \$5000 in each year of the contract for an annual awards ceremony for the volunteers each April of the contract. The Association and fire chief will agree on a venue, forum and list of recognitions.]

Section [Four]Two. The County and the MCVFRA will determine the size and location of an “orange style” MCVFRA decal which will be displayed on each side of County owned apparatus used in providing fire, rescue and emergency medical services that are staffed by bargaining unit members. The decals will be provided by the Association.

* * *

Article 7 – Disciplinary Action Procedures for LFRD Volunteers

* * *

Section Four. Fire Chief's Discipline.

* * *

- d. Once the Fire Chief has determined there is cause to discipline a volunteer, the Fire Chief agrees to give due consideration to the relevance of any mitigating and/or aggravating factors, in deciding the nature and level of disciplinary action appropriate, including, but not limited to:
1. the nature and seriousness of the offense, and its relation to the volunteer's duties, position, and responsibilities, including whether the offense was intentional or technical and inadvertent, or was committed maliciously or for gain, or was frequently repeated;
 2. the volunteer's job level and type of employment, including his or her supervisory or fiduciary role, the frequency and level of his or her contact with the public, and the prominence of his or her position;
 3. the volunteer's past MCFRS disciplinary record;
 4. the volunteer's past work record, including his or her length of service to the Department and LFRDs, his or her performance, his or her demonstrated ability to get along with fellow MCFRS members, and his or her dependability;
 5. the effect of the offense upon the volunteer's ability to perform at a satisfactory level;
 6. the consistency of the penalty with those imposed upon other MCFRS members with similar personnel history for the same or similar offense(s);
 7. the notoriety of the offense or its impact upon the reputation of MCFRS;
 8. the clarity with which the volunteer was actually on notice of any rules, regulations, directives, policies, orders, instructions or the like that were violated in committing the offense, or had been warned about the conduct in question;
 9. the potential for rehabilitation;
 10. mitigating circumstances surrounding the offense, such as unusual job tensions, personality conflicts, mental impairment, harassment,

bad faith, or malice or provocation on the part of others involved in the matter; and,

11. the potential adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the volunteer or others.

Section Five. Disciplinary Process.

- a. Statement of Charges.

* * *

2. The Fire Chief must allow the individual at least 15 County business days after receiving the Statement of Charges to respond. The volunteer has the right to request an extension of time on behalf of the volunteer to respond to the Statement of Charges. Such requests shall not be unreasonably denied.

* * *

- b. Notice of Disciplinary Action. If the Fire Chief determines to proceed with discipline, and after following section 5 (a) (1) – (4), the Chief must issue a Notice of Disciplinary Action. A Notice of Disciplinary Action must include:

* * *

5. notice of the right to appeal the disciplinary action to the [Fire and Rescue Commission (FRC)] Merit System Protection Board (MSPB); and
6. the deadline for filing [a FRC] an MSPB appeal.

* * *

Section Eight. Appeals of certain disciplinary actions. Per Chapter 21-7 of the Montgomery County Code, a volunteer firefighter or rescuer aggrieved by an adverse final action of the Fire Chief involving the removal, demotion, or suspension of, or other disciplinary action applied specifically to, that individual may appeal the action within 30 days after the action unless another law or regulation requires that an appeal be filed sooner, to the [Fire and Rescue Commission] Merit System Protection Board. An appeal must not stay the disputed action. [A volunteer at a local fire and rescue department may appeal a decision of the Fire and Rescue Commission concerning a specific personnel action, or the failure to take any such action, to the Merit System Protection Board as if the appellant were a County merit system employee.] Any aggrieved party may appeal the decision of the Board to any court with jurisdiction under the rules governing appeals

from administrative agencies, and may appeal any adverse decision of that court to the Court of Special Appeals. Further, all provisions of Chapter 21-7 are hereby retained in full force and effect.

Section Nine. Disciplinary Examinations

* * *

- C. Prior to an examination, the County agrees to inform the volunteer's representative of the subject of the examination. The representative must also be allowed to speak privately with the volunteer before the examination. The volunteer's representative must be allowed to speak during the interview. However, the volunteer's representative does not have the right to bargain over the purpose of the interview. The volunteer's representative can, however, request that the County representative clarify a question so that the volunteer can understand what is being asked. When the questioning ends, the volunteer's representative can provide additional information to the County representative. Before providing such information, the volunteer's representative and the volunteer may briefly meet privately for purposes of discussion.

[C] D. The County is free to terminate any examination of a member in connection with an investigation at any time for any reason.

[D] E. The Association shall have no right to represent a member who is examined as a witness or third party in any investigation. However, if the member learns during the course of the witness/third-party investigation that he or she may be subject to discipline, he or she may request Association representation pursuant to Section 9.A. above.

Section Ten. Time, Place and Manner of Interviews/Examinations Conducted by the Internal Affairs Section of a Member. Any interview or examination conducted by the Internal Affairs Section pursuant to Section 9 of this Article may take place at the Internal Affairs Section office, the MCVFRA Office, or at any other place to which the parties mutually agree. The investigator must not go to any fire station or volunteer worksite in an attempt to locate the volunteer to interview without prior agreement by the volunteer.

Section Eleven. MCFRS/ Internal Affairs Division Investigations

- A. The LFRD may request the assistance of IAD through the Fire Chief in conducting an investigation. The IAD shall work with the LFRDs as requested.

* * *

Article 9 – Volunteer Records

* * *

Section Seven. Internal Affairs Files.

1. If an LFRD-only Internal Affairs investigation is conducted, all records generated from that investigation shall be kept, handled, and maintained according to that LFRD's policies and procedures. If a joint IAD/LFRD investigation is conducted, all records generated from that investigation shall be kept by each entity according to their policies and procedures.
2. Access to the IAD files shall be limited to:
 - a) The volunteer, but only to the extent allowed by item 3 below
 - b) Fire Chief, LFRD Department head or designees
 - c) County Attorney or designee (need to know basis; i.e., when the volunteer is involved in litigation)
3. The Department will provide the volunteer and their representative any written statements (e.g., citizen complaints, department observations, etc.) in the possession of the MCFRS and used in connection with an adverse action taken against a bargaining unit member. These statements will be sanitized (i.e., address, phone number deleted) to protect privacy rights in accordance with the law.
4. In cases involving complaints where the charges were deemed unsustainable or unfounded by IAD, the files shall be expunged at the latter of three (3) years after the date the findings were made or any applicable statute of limitations or at the conclusion of any pending litigation.
 - a. Files involving complaints where a charge was sustained shall be eligible for expungement at the latter of five (5) years or any applicable statute of limitations or at the conclusion of any pending litigation. When documents are expunged from a volunteer's file, in accordance with the criteria above, a notice shall be sent to the volunteer's last known address.
 - b. The expungement method shall be the shredding of the physical file. In cases where more than one bargaining unit

member is involved and one or more bargaining unit members is not entitled to expungement, the name of the bargaining unit member who is eligible for expungement will be redacted from those documents that refer to multiple bargaining unit members. Those documents that refer only to the bargaining unit member who is eligible for expungement shall be destroyed.

- c. The expungement of information from the electronic database shall consist of the electronic obliteration of the bargaining unit member's name, identification number and LFRD affiliation.

* * *

Article 11 – Uniforms and Equipment

* * *

Section Two. Effective July 1, [2010] 2012, the County shall purchase [874] 220 pairs of leather turnout boots. Effective July 1, 2013, the County shall purchase 220 pairs of leather turnout boots. The Association shall distribute the boots to active volunteers as defined in Montgomery County Code Section 21-21(a) on the IECS who belong to an LFRD with an approved Stand-by program;

[Section Three. Effective July 1, 2010, the County will supply 874 gear bags for turn out equipment to the MCVFRA. The Association shall distribute the gear bags to active volunteers as defined in Montgomery County Code Section 21-21(a) on the IECS who belong to an LFRD with an approved Stand-by program;]

Article 12 – Nominal Fee

An active volunteer as defined in Section 21-21 (a) of the Montgomery County Code shall receive either:

- (1) a nominal fee of: [three hundred (\$300.00) dollars July 1, 2009; four hundred (\$400.00) dollars July 1, 2010] two hundred forty (\$240) dollars July 1 each year of this agreement;

OR

- (2) a nominal fee of: [five hundred (\$500.00) dollars July 1, 2009; six hundred (\$600.00) dollars July 1, 2010] four hundred (\$400) dollars July 1 each year of this agreement; if the active volunteer:

* * *

Article 14 – Duration of Agreement

The term of the agreement will be three (3) years from July 1, [2008] 2011 through June 30, [2011] 2014.

Article 15 – Drug and Alcohol Testing

Section One. [The County and MCVFRA shall work collaboratively to develop a drug and alcohol testing policy for all volunteers. Such policy must include: post-collision, for cause, and random drug and alcohol testing. The Drug and Alcohol testing policy must be completed by the parties no later than May 1, 2008. The parties agree that mediator/arbitrator Jerome Ross retains jurisdiction to issue a final decision in accordance with the impasse procedures as stated in Montgomery County Code Section 21-6. Should the parties not reach agreement on a drug and alcohol testing policy including the above listed criteria before May 1, 2008, the parties shall submit last best offers to mediator/arbitrator Jerome Ross no later than 5:00 pm on May 7, 2008. Arbitrator Ross will render a decision no later than 5:00 pm on May 30, 2008. Such policy will be effective July 1, 2008. [See Appendix I]]

The Association and County recognize the importance of insuring the public's safety and maintaining a fire and rescue service free from alcohol abuse and drug abuse by its dedicated public servants. The Association members will continue to follow the Drug Testing Policy and Procedures agreed upon in the collectively bargained agreement effective for the years July 1, 2008 through June 30, 2011 with the following amendments:

Amendment One: The random drug testing portion of the program will not commence for the volunteer personnel the policy until June 30, 2012.

Amendment Two: Under Background, the percentage of IECS certified LFRD personnel to be tested in a year will be changed from 25% to 20% per year.

Article 16 - Training

Section One. The PSTA shall [consider] grant equivalencies for all National Professional Qualification Board (Pro-Board), International Fire Service Accreditation Congress, and Maryland Fire Rescue Institute (MFRI) training certifications. The PSTA [shall make every effort to] issue a course recognition and equivalency within 14 days of a volunteer request.

* * *

[Section Four. The PSTA shall develop an on-line registration system for all PSTA courses by December 1, 2008. Where possible, all registration will be done electronically]

after that date. The MCVFRA shall be consulted with regard to the program's design and implementation.]

Section [Five] Four. Where feasible, the PSTA shall develop on-line courses for PSTA courses that can be taught through distance learning by December 1, 2009. The MCVFRA shall be consulted with regard to the courses' design and implementation.

Section Five. Volunteers will only be removed from the IECS in a manner consistent with Chapter 21-8 of the Montgomery County Code.

Section Six. If an LFRD volunteer transfers from one LFRD to another LFRD the County shall maintain that volunteer on the IECS continuously and use all certifications that were previously submitted as the required documentation. The LFRD or volunteer shall not be required to resubmit paperwork and/or certifications for simply transferring to another LFRD.

Section Seven. The County will issue a County ID card and PASS tag when a new volunteer joins an LFRD upon completion of their background check and acceptance into an LFRD in a timely manner.

* * *

Article 21 – Communications

Electronic Correspondence: The County agrees to create a #FRS.Volunteer Bargaining Unit email group for official MCVFRA correspondence sent to bargaining unit members. The County agrees to provide the MCVFRA President, or designee, access to the distribution group. Access to send correspondence to this group will be limited to authorized officers of the MCVFRA as defined by the MCVFRA.

Article 22 – Volunteer Basic Orientation Course

Section One. The County agrees to fund the Volunteer Basic Orientation Course each year of the agreement not to exceed \$5,000 per year. The funding requests will be submitted to the fire chief for reimbursement each quarter.

In the Matter of the Arbitration)

Between)

FIRE CHIEF, MONTGOMERY COUNTY,
MARYLAND FIRE AND RESCUE SERVICE)

and)

MONTGOMERY COUNTY VOLUNTEER FIRE)
AND RESCUE ASSOCIATION)

2011 Interest Arbitration

Before:

Jerome H. Ross, Impasse Neutral

Dates of Mediation and Arbitration:

January 8 and 9, 2011

DECISION OF THE IMPASSE NEUTRAL

I. Background

The Montgomery County Code, Sec. 21-6 (the Code) requires direct negotiations between the Fire Chief of the Montgomery County Fire and Rescue Service (MCFRS) and the Local Fire and Rescue Departments' (LFRDs) representative. The Montgomery County Volunteer Fire and Rescue Association (MCVFRA or Association) is the elected representative and includes all ranks from basic firefighter, rescuer and EMT/paramedic to volunteer fire chiefs, deputy chiefs, presidents and directors. The Code authorizes the impasse neutral, upon finding a bona fide impasse, "to require the parties to jointly submit all items previously agreed upon and each party to submit a final offer consisting of proposals not agreed upon....[T]he impasse neutral must select the final offer¹ that, as a whole, the impasse neutral judges to be the reasonable." The Code further provides:

¹COUNTY ACT

¹The parties refer to the "final offer" as the Last Best Final Offer or LBFO.

In selecting a final offer under this Section, the impasse neutral must consider only the following factors:

- (1) previous negotiated agreements between the parties, including the past bargaining history that led to the agreements;
- (2) the affordability of all items that will have a significant cost to the Service;
- (3) effectiveness and efficiency of operations;
- (4) safety of the public; and
- (5) the interest and welfare of the public.

II. Impasse Procedure

The impasse procedure consisted of mediation and arbitration. During mediation the parties resolved all non-economic issues under several existing Agreement provisions including²: Article 7, Disciplinary Action Procedures for LFRD Volunteers; Article 8, Contract Grievance Procedure; Article 9, Volunteer Records; Article 15, Drug and Alcohol Testing; and Article 16, Training. The unresolved economic issues were submitted to arbitration for resolution.

III. Unresolved Economic Issues

The Association's LBFO

Article 11, Uniforms and Equipment - Zero increase in the number of pairs of boots the County will purchase in year one of the Agreement; and 220 pairs of boots in the second and third years of the Agreement -- which is a 54 percent reduction from the 874 pairs provided in the third year of the current Agreement. Eliminate all gear bags -- which is a 100 percent reduction from the 874 gear bags provided under the current Agreement.

Article 12, Nominal Fee - \$240 for LOSAP active and \$400 for most active per year of the Agreement -- which is an almost 40 percent reduction from the

²The parties had agreed to other non-economic issues prior to invoking impasse resolution procedures.

current Agreement (\$400 and \$600 respectively) and a 20 percent reduction (\$300 and \$500 respectively) of what was actually funded in FY 2011 (\$240 and \$400 respectively).

Article 14, Duration of Agreement - Three years.

New Article, Volunteer Basic Orientation Course (VBOC) - \$5,000 per year in each year of the Agreement -- which is a 70 percent reduction from its last proposal for settlement to the County.

Side Letter, MCVFRA Operating Funds - \$223,250 per year in each year of the Agreement, in a side letter -- which is a five percent reduction from the previously negotiated and funded agreement.

MCVFRA Vehicle - \$26,000 in year three of the Agreement -- which is an almost 40 percent reduction from the \$40,000 provided in the third year of the current Agreement and which was not funded due to the state of the economy.

The Fire Chief's LBFO

Article 11, Uniforms and Equipment - If a volunteer transfers to a new LFRD, the volunteer may transfer their coat with them. Effective July 1, 2011 and July 1, 2012, the County shall purchase 300 pairs of boots. Effective July 1, 2011, the County will supply 874 gear bags.

Article 12, Nominal Fee - Effective July 1, 2011, nominal fees will be reduced by 50 percent for the duration of the Agreement.

Article 14, Duration of Agreement - Two years.

New Article, VBOC - Not to exceed \$16,000 each year of the Agreement.

Side Letter - "Effective July 1, 2011, the County will no longer be providing funding to the MCVFRA for expenses related to the Association's fulfillment

of its functions as the LFRD authorized representative. Additionally, the previously designated \$40,000 for anew Association vehicle, which [sic] not appropriated by Council, will not be paid in this or any future fiscal year."

IV. The Parties' Contentions

The Association points out that its LBFO economic proposals are lower than the funding called for in the final year of the current Agreement by an estimated \$409,008 -- a 41 percent reduction. The concessions in its LBFO are more than six times the percentage reductions for public safety agencies. It submits that the draconian and excessive cuts contained in the County's final proposal prior to the LBFO are more consistent with political retribution for the Association's position and legally protected advocacy against the County Executive's ambulance fee legislation.

The Association maintains that it has negotiated in good faith, and its LBFO makes substantial concessions that are more than sufficient to address the County's legitimate budget concerns for which the Executive is asking heads of public safety and non-public safety agencies to reduce their FY 2012 budgets by five and 15 percent respectively. It points to the Code which describes "the delivery of fire, rescue and emergency services through the [MCFRS], including the [LFRDs]" as a "partnership". It contends that adequate funding for equipment, training and operational support under the Agreement is critical to ensuring the strength and effectiveness of the partnership -- a relationship which is specific and unique to Montgomery County and unlike any other fire and rescue service in the United States.

The Association contends that it differs significantly from a traditional labor organization. Its membership includes all ranks from firefighters to fire chiefs, deputy

chiefs, presidents and directors -- not simply a labor-management relationship. Representation is not optional as with labor organizations. Its significant and varied responsibilities under the law, policies and procedures are far more reaching than any labor organization. It is a nonprofit corporation. It creates, manages and maintains fire and rescue training courses to supply operational volunteers. It qualifies as a fire and rescue management resource group and can apply for federal firefighting grants for recruitment, training new volunteers and retaining those members. It operates the first and only Fire Rescue and Recruiting Station in the nation and was awarded a prestigious national award by the International Association of Fire Chiefs in recognition of outstanding innovation, development and implementation in recruiting new volunteers. The rent and expenses for this station are paid from the money received for MCVFRA operations in the Agreement. The MCVFRA membership pays no individual dues, nor are they assessed any fee. Nor do they receive pay, leave, retirement, COLA or raises from the County. The MCVFRA has been required to appear quarterly with the Fire Chief before the County Council's Public Safety Committee to report on and discuss the progress of fire and rescue service reforms.

The Association points to the absence of any evidence that prior funding for MCVFRA operations was temporary or seed money. To the contrary, the legislative history establishes the right of the LFRDs, through a designated representative, to directly negotiate with the Fire Chief on certain volunteer-related issues, and the County would pay the salary of the LFRD representative's top staff member, who would be similar to an employee union president. Moreover, the Association notes, during arbitration Chief Bowers described his relationship with the MCVFRA as very positive and productive

with at times almost hourly conversations, daily interactions and multiple meetings on a variety of issues throughout the organization. Additionally, the Chief said it was important to have the Association; it helps him do his job; it helps support the entire service; and it provides active service both administratively and operationally.

The Association observes that since the law changed in 2004, not once has the County challenged the legality of bargaining for the funding of the MCVFRA. The parties have bargained two previous Agreements over more than five years, and funds to operate were negotiated for every year. It points out that only during the last conference call with the impasse neutral did the County even suggest that the funding for the MCVFRA is non-negotiable. Indeed, it asserts, the bargaining history clearly establishes the ability to bargain for funding is not only permissible, it is required under the law.

The Association does not dispute the County's assertion that the economic climate is challenging, and local governments are requiring savings from their agencies. However, it cites a report issued by the Council's Office of Legislative Oversight (OLO) -- and independent agency which does not report to the County Executive. The report finds that County government spending on personnel costs increased 64 percent while the total number of work years increased by only ten percent between FY 2002 and FY 2011; and the primary driver behind higher personnel costs was not an increase in the size of the workforce but rather the increase in average cost per employee. Furthermore, the Association notes, nothing in the report concerning potential savings includes reductions in: the number of volunteer firefighters, equipment and training for volunteers, or funding for the MCVFRA.

With regard to the application of factor (1) to its proposal for boots, the Association points out that the County agreed to provide 874 pairs in the current Agreement, thus recognizing the importance of all personnel having the proper equipment. Under factor (2), affordability, it has reduced the cost of boots by almost one-half, which equips only one-third of the total active volunteers -- but it's a start. The availability of properly equipped firefighters, under factor (3), increases the effectiveness and efficiency of operations in all emergency situations as well as the safety of the public under factor (4) and the interest and welfare of the public under factor (5). The Association notes its further offers to forego gear bags for the duration of the Agreement.

In applying factor (1) to the nominal fee, the Association observes that both the first and second Agreements included funding to offset the out-of-pocket expenses volunteer fire/rescue personnel incur for gasoline, vehicle wear-and-tear traveling to and from the station, supplemental uniform and equipment purchased, meals while performing standby duties, and supplement training courses. It notes that the nominal fee was increased by 20 percent in the final year of the current Agreement but was not funded by the County Council. Nonetheless, in recognition of the budget situation under factor (2), its LBFO proposes a 20 percent reduction in funding -- which provides more cost savings than the County Executive has proposed for the operating expenses of either public safety or non-public safety agencies. Regarding factors (3) and (4), it asserts, increases in the number of trained firefighters and EMTs increase the efficiency of operations by having more personnel on each fire truck as well as the safety of the public and firefighters. Finally, under factor (5), the Association observes, since implementing

the first nominal fee, the number of volunteers has increased by over 40 percent which in turn contributes to the interest and welfare of the public.

The Association points out that, with regard to factor (1), the duration of the current Agreement is for three years, and its LBFO proposal is consistent with the IAFF (career firefighters) agreements for the past 20-plus years. Concerning factor (2), its proposal "backloads" certain benefits and reduces the cost to the County more than would be realized through a shorter-term contract. The longer-term also contributes to effectiveness and efficiency, factor (3), by not requiring participation in collective bargaining for a longer period. As a result, the MCVFRA and the MCFRS can concentrate their efforts in areas which will increase overall safety to the public, factor (4). The Association maintains that the interest and welfare of the public are served where the parties can improve their working relationship, as opposed to bargaining during longer-term contract.

The Association observes that, concerning factor (1), while the current Agreement does not address the VBOC, the Fire Chief has funded the course for the past two years. It submits that the yearly investment of \$5,000 for training hundreds of volunteers each year is sound and affordable, factor (2), and will increase the effectiveness and efficiency of operations, factor (3), and safety and interest and welfare of the public, factors (4) and (5).

The Association argues that MCVFRA operating funds is the biggest issue because individual members do not receive a paycheck and do not directly contribute to the operating costs of the MCVFRA. Rather, the MCVFRA is dependent on the County for funding, as recognized by the enabling legislation and press articles following

passage. It argues that past Agreements, factor (1), is the strongest factor as to why the MCVFRA must be funded adequately to carry out its legal requirement. It explains that the County funding began immediately after the enabling legislation for a half-year period at \$75,000 in 2004; in the first Agreement (April 1, 2007 – June 30, 2008) the funding increased to \$185,000; and in the second Agreement (July 1, 2008 – June 30, 2011) the funding increased to \$235,000 per year for each of the three years -- and the County Council fully funded the MCVFRA even in the current year's economic downturn. Moreover, it observes, only during the last conference call with the impasse neutral did the County even suggest that MCVFRA funding is non-negotiable. The Association argues that bargaining history clearly establishes the negotiability of MCVFRA funding as not only permissible but required under the law. As a bargaining concession, the Association's LBFO proposes the funding remain in a side letter as has been the practice in the two previously negotiated Agreements.

In addressing factor (2), affordability, the Association asserts that the funding is one of the most economical uses of tax dollars to manage volunteer issues and events, assist in training, run training courses, recruit new volunteers, apply for and manage federal grants, do public education and outreach, negotiate for benefits, respond to policy issues, work with the Fire Chief, report to the County Council, and assist in local, state and national fire and rescue policy discussions and formulation. Additionally, the MCVFRA manages and represents over 2,000 volunteers in 19 LFRDs with limited resources -- one employee paid for under this grant and a recruiter funded under a federal grant that is managed by the executive director and the volunteer president. It also runs the only volunteer recruiting station in the nation on all volunteer labor, with donated

supplies and equipment, but relies completely on the funding in this Agreement to pay the reduced rent negotiated with the building owner under a three-year lease for which it would be liable even if the Agreement is not funded. In sum, the Association notes, the funding represents less than one-tenth of one percent of the overall fire rescue budget of \$192 million but significantly affects over one-half of the entire fire and rescue service and results in a significant savings to the MCFRS.

Concerning factor (3), the Association explains, with the increase in volunteer participation resulting from MCVFRA's recruiting and retention programs and the operating funds under the side letter, the LFRDs were able to add volunteer staffing to supplement career staff that were on overtime in order to cover two critical hours during the day where traditionally it has been difficult to attract volunteers. This was done at the Fire Chief's request and required by the Council in connection with cuts in overtime funding over a year ago. The total savings to the County per year is \$8,103,500.

The Association maintains that under factor (4), the significant and rapid increase in volunteers, from 765 in October 2008 to 1,583 in November 2010, has increased the safety of the public.

By funding the MCVFRA, the Association claims, under factor (5), the public maintains its community advocate who is part of the LFRD's hierarchy. The interest and welfare of the public are well served by having an independent public safety organization able to speak on behalf of the citizenry in forums with governmental and quasi-governmental agencies.

With regard to the MCVFRA vehicle, the Association points out that although the current Agreement, under factor (1), provides for the vehicle in the third year, it was not

funded by the Council due to the economy. It observes that, under factor (2), placing the vehicle in the third year of the Agreement and reducing the amount of funding by 40 percent saves significant money. Moreover, the vehicle will support operations in innumerable way, factor (3), such as transporting training equipment and the recruiting booth to events and transporting board members and other volunteers to meetings, Council sessions, conventions, training classes and parades. It will be a marked vehicle advertising the volunteers and include a large recruiting message on the body. The Association submits that public safety, factor (4), is improved by having volunteers out in the public doing *community training, education, recruiting and other public events* in a marked volunteer fire and rescue vehicle. The interest and welfare of the public, factor (5), is served by volunteers being able to conduct business efficiently, effectively and with the support of the MCFRS.

The Fire Chief maintains that he should not be forced to make further cuts to fire and rescue services in order to fund the MCVFRA's executive director position and the purchase of the vehicle for use by the Association — neither of which will have any impact on the delivery of fire suppression and emergency rescue services performed by volunteer fire fighters and paramedics. The Fire Chief further submits that his LBFO is in the public interest, especially where he has had to pare his budget for the past three fiscal years by \$25 million to \$30 million and once again has been asked to cut his budget by five percent. Further demonstrating his commitment to maintaining services is his proposal to fund the purchase of 300 pairs of boots annually for the term of the Agreement. Finally, he points out, the MCVFRA's funding proposal is not listed in the Code among the issues subject to negotiations; and, as further stated in the Code, budgets

and expenditures and "any other issues not specified as subject to negotiation" are not subject to bargaining.

With regard to the relevant factors to be considered under the Code, the Fire Chief observes that, under factor (1), the parties have never agreed to MCVFRA funding as a provision of their contract; rather, it has been memorialized in a memorandum of agreement. He asserts that while parties may discuss non-negotiable subjects, no party can take a non-negotiable subject to impasse as the MCVFRA has done here. Therefore, the MCVFRA's proposal is both unlawful and unreasonable, and the Association's LBFO has to be rejected as a whole. The Fire Chief further states that, "[a]ssuming the impasse neutral finds that MCVFRA funding is subject to bargaining," other factors must be considered.

Concerning factor (2), the Fire Chief points out, when the County, through the MCFRS, agreed in the past to fund the MCVFRA, the County's fiscal situation was much different, and it has a structural budget problem due to the increasing costs of its fixed spending commitments. The latest revenue forecast shows overall revenue estimates for FY 2011 down \$85.7 million below what has been budgeted; and December updated revenue estimates for FY 2012 are approximately \$73.8 million below previous estimates. As a result, the Fire Chief emphasizes, the County now has a projected FY 2012 budget gap of \$300 million that it has to close. MCFRS has had to cut approximately 50 uniform positions and 18 non-uniform civilian positions and take apparatus out of service over the last three fiscal years. Accordingly, the Fire Chief would have to make additional service cuts to personnel if he is forced to fund MCVFRA's compensation for its executive director.

The Fire Chief disputes the MCVFRA's assertion that it is being asked to bear too great a portion of MCVFRS's proposed budget reduction because the FLRDs challenged the County's ambulance fee. He recognizes that the loss of \$14 million is going to impact the County's and MCVFRA's budgets; however, MCFRS would have to reduce its budget by five percent regardless of whether the ambulance fee remained on the books. The elimination of the fee only served to make budget cuts that have the least impact on services more difficult.

The Fire Chief notes that the MCVFRA can tap the 19 LFRDs it represents for funding, just as the labor organizations representing County employees are funded by their members. Many of the LFRDs have assets in the millions of dollars, and they funded the MCVFRA since 1922 prior to receiving County funding in 2005 in order to meet the Association's obligations under the bargaining law.

The Fire Chief asserts that under factor (3) an award requiring the funding of the MCVFRA will negatively affect the effectiveness and efficiency of the MCFRS, particularly in the delivery of fire suppression and emergency medical services; whereas eliminating such funding to the MCVFRA will have no impact on MCFRS or LFRD operations. The loss of funding for the MCVFRA's and its executive director's sole responsibility to negotiate on behalf of the 19 LFRDs will not negatively impact the delivery of services by those entities.

With regard to the safety of the public, factor (4), the Fire Chief emphasizes the across-the-board reductions in the level of service due to increased response times at certain times of the day in certain areas of the County. If forced to fund the MCVFRA, additional service cuts to personnel would be required. Furthermore, the reasonableness

of the Fire Chief's LBFO is supported by the provisions for boots, gear bags and the nominal fee -- all related to volunteers who perform public safety services.

The Fire Chief claims that its LBFO under factor (5), interest and welfare of the public, weighs heavily in favor of its reasonableness. The County can no longer afford the luxury of funding the executive director position when it would come at the expense of the delivery of public safety services to the community.

V. Findings and Conclusions

Five of the seven unresolved issues may be viewed in the following context. The Fire Chief's LBFO provides greater equipment gains (boots and gear bags) directly to volunteers who are performing fire and rescue services. The parties' LBFOs are similar with regard to the nominal fees. The Association's LBFO for a three-year Agreement would appear to benefit the Fire Chief by providing greater stability and certainty in the parties' relationship for an additional year.³ The Fire Chief's LBFO contains significantly more funding for the VBOC.

The parties' LBFOs in connection with MCVFRA and vehicle funding reflect widely divergent views of the MCVFRA's role and responsibilities. The Association sees its role as a partnership which is authorized by law and provides for direct negotiation with the Fire Chief -- a role which never has been challenged until this round of negotiations when the Fire Chief's representative, in a teleconference on January 21, 2011, suggested non-negotiability with regard to MCVFRA funding. The Association essentially contends that its funding is a mandatory subject of bargaining. The Fire Chief asserts that the funding of the Association's operations is not authorized in the Code and,

³The Fire Chief did not specifically address this issue during the proceedings or in its post-hearing brief.

as a budget and expenditure, is a prohibited subject of bargaining which cannot be taken to impasse. He also notes that the parties never have agreed to Association funding as a contract provision.

I find the subject of Association funding to be negotiable. I hasten to add, however, that neither party has provided substantial argument supporting its procedural and substantive positions on negotiability. The Code does not address the impasse neutral's role and authority when assertions of non-negotiability are raised, especially for the first time after -- not during -- discussions of a subject in mediation or at arbitration and raised only obliquely during post-hearing discussions.⁴ Furthermore, I find a distinction without a difference in the Fire Chief's contention that the placement of the parties' agreement to fund the MCVFRA in side letters and not the Agreements is a basis for finding the subject non-negotiable where both documents reflect the negotiated agreement of the parties to provide the funding. In the same vein, a question arises as to why the Fire Chief would negotiate over a subject he maintains he is prohibited from bargaining with the Association.

I find that no useful purpose would be served by rendering findings based upon the OLO report or the Association's assertions regarding the effect of its advocacy against the ambulance tax on the Fire Chief's positions in negotiations and his LBFO.

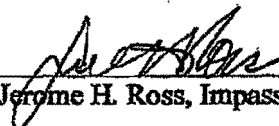
After considering the seven issues at impasse, I find that the Association's LBFO is the more reasonable. Its proposals constitute a 41 percent reduction from the final year's items contained in the current Agreement. I also am persuaded that the

⁴My notes of the January 21 conference call reflect that the sole reference to non-negotiability was a comment by Jeremy Milrski, a County human resources specialist, that the Fire Chief did not want the Association funding mentioned in the Agreement because the Code excludes budgets and expenditures as negotiable items. Moreover, I note that negotiability issues were clearly raised in connection with other subjects of bargaining during mediation.

Association's role and responsibilities far exceed the Fire Chief's description that funding MCVFRA essentially funds the executive director's salary and a vehicle and have no impact on the delivery of fire and rescue services. At a minimum, the organization has almost doubled the number of volunteers and has engaged in a wide variety of functions which ultimately benefit the MCFRS and the public and easily offset what the Fire Chief has described as what would be a loss of effectiveness and efficiency in the delivery of fire suppression and emergency medical services as a result of the funding. No reasonable basis has been shown for obliterating all of the funding for the institution which serves a useful purpose and has been created in law. In sum, I find that that the underlying concept of the Fire Chief's proposal that reductions in MCVFRA funding do not affect the delivery of fire and rescue services (as does the provision of 600 pairs of boots over the term of the Agreement) misses the mark in not considering the importance of the institution to the partnership of the MCVFRA and the MCFRS.

AWARD

The Association's final offer, as a whole, is more reasonable.


Jerome H. Ross, Impasse Neutral

January 31, 2011
McLean, Virginia